



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Served September 16, 1996

Issued by the Department of Transportation
on the 5th day of September, 1996

Joint Application of

**COMAIR, INC.
and
DELTA AIR LINES, INC.**

Docket OST-96-1632

**for approval of the transfer of certificate
authority pursuant to 49 U.S.C. §41105
(New York/Newark -Montreal/Ottawa, Canada)**

Application of

DELTA AIR LINES, INC.

Docket OST-96-1275

**under 49 U.S.C. §§ 41102 and 41108 for Renewal
of a Certificate of Public Convenience and
Necessity**

ORDER APPROVING ROUTE TRANSFER

Summary

By this order we approve the Joint Application of Comair, Inc. (Comair) and Delta Air Lines, Inc. (Delta) for the transfer to Comair of Delta's certificate for Route 617 authorizing scheduled combination service between New York/Newark and Montreal, and Ottawa, Canada. The order also dismisses Delta's renewal application for Route 617.

Application

On August 8, 1996, Comair and Delta filed a joint application for approval by the Department under 49 U.S.C. §41105 of the transfer of Delta's New York/Newark-

Montreal/Ottawa, Canada certificate authority.¹ The Joint Applicants state that Comair intends to operate the New York-Montreal service under the Delta connection code and proposes to commence service on the New York-Montreal route on October 1, 1996. Because of the imminence of the proposed startup date, the Joint Applicants request expeditious consideration of their application.

In support of their application, the Joint Applicants state that Comair plans to maintain the level of frequencies currently operated by Delta and to operate five daily round-trip, nonstop flights between New York (LGA) and Montreal, using Canadair RJ50 aircraft, with 50 seats in a one-class configuration. They maintain that the public will continue to receive the highest levels of service; that Delta reservations agents will continue to take reservations; passengers will continue to receive Delta frequent flyer mileage for the flights; and that passengers will experience a seamless transfer of service. They further state that Delta and Comair hold certificates of public convenience and necessity authorizing them to carry persons, property and mail in scheduled interstate and foreign air transportation and that each has been found fit, willing and able to perform the air transportation authorized by its respective certificates.² They state that under the terms of their Transfer Agreement, Comair will purchase the route for \$50,000, and that the transfer includes reservations of passengers for travel on the Route subsequent to the Closing Date, which will take place no later than seven days after final Department approval of the transfer and the United States has designated Comair to operate the Route. They also state that Delta is not transferring any slot or other landing authority to Comair as part of the transaction, but rather, that Comair will bear any and all costs associated with its acquisition and ownership of any such slots or landing authority.

The Joint Applicants also argue that the transaction warrants approval under the criteria Congress has mandated, namely, the effects of the transfer on (1) the viability of each carrier, (2) competition in the domestic airline industry, and (3) the trade position of the United States in the international air transportation market.

In this regard, the Joint Applicants state that marketplace efficiencies dictate the use of Comair's smaller 50-seat jet aircraft rather than Delta's larger MD-88 aircraft on this route; that Comair anticipates high load factors and significant profits resulting from the operation of the route and Delta has determined that it can make more efficient, productive, and financially beneficial use of its resources by withdrawing from the route and reallocating the resources involved elsewhere in its system. They further maintain that the reallocation of these resources from Delta to Comair should have a positive impact on the viability of both carriers. They claim that Comair's presence on the New York-Montreal route will assure continued and uninterrupted intragateway

¹ On August 12, 1996, the Joint Applicants revised Page 8A of their agreement to reflect a signature page and Exhibit JA-4 page 2 of 2 to reflect aircraft fuel consumption and availability for Comair's New York-Montreal service.

² See Order 86-11-26 for Comair; and Order 95-3-25 for Delta.

competition in the New York-Montreal market;³ that the Comair-Delta route transfer will advance the Department's policy of fostering intergateway competition since Comair as a Delta Connection carrier will continue to provide the same level of connecting services to passengers traveling to and from points behind New York-Montreal; that the transaction will strengthen Comair and allow Delta to better use its resources, thereby having a positive impact on domestic competition; and finally that by assuring continued and uninterrupted service between LaGuardia and Montreal with connections to cities beyond LaGuardia on Delta's system, commerce between the U.S. and Canada will be preserved and enhanced and the transaction will have a positive impact on the trade position of the United States.

The Joint Applicants also state that in response to the Administration's Initiative to Promote a Strong Competitive Aviation Industry, the route transfer will have no impact on any permanent full-time personnel positions and that Comair anticipates that the proposed transfer will create additional employment opportunities at Comair.

By letters dated August 16 and September 3, 1996, the Joint Applicants informed the Department that they had polled all parties served with their application and that no one objects to the Application.⁴

Decision

We conclude that it is consistent with the public interest to approve the joint application. Thus, we will transfer Delta's New York/Newark-Ottawa/Montreal certificate authority to Comair. In this case, since no party opposes the joint application for transfer of the route, we will proceed to final order.

The statute authorizing certificate transfers, 49 U.S.C. § 41105, provides that no certificate may be transferred unless the Department approves the transfer as being consistent with the public interest. The Department has adopted as its public interest standard in such cases a policy of allowing proposed transfers provided that they do not conflict with important international aviation policy objectives and are not otherwise inconsistent with the public interest.⁵ In determining whether a transfer of route authority is consistent with the public interest, we must consider three additional specific criteria: the effect of the transfer on the viability of each of the carriers

³ They indicate that Air Canada currently offers five daily nonstop flights between LaGuardia and Montreal; that Air Canada and Continental serve the Newark-Montreal market under a code-share, blocked space agreement; and that American Eagle and Canadian Airlines International serve the JFK-Montreal market also under a code-share, blocked space arrangement.

⁴ The Port Authority of New York and New Jersey filed in the docket a copy of a letter addressed to the Federal Aviation Administrator regarding LaGuardia slots that are used to provide this service. This order does not address any slot issues; it merely transfers certificate authority. We note, moreover, that the underlying agreement regarding the transfer does not purport to transfer any slots.

⁵ See *Joint Application of Northwest Airlines, Inc. and Delta Air Lines, Inc.*, Order 95-4-41, p.3, and *Joint Application of Federal Express Corporation and Evergreen International Airlines, Inc.*, Order 95-8-9, p. 4.

involved; on competition in the domestic airline industry; and on the trade position of the United States in the international air transportation market. Also the Department has said that it will carefully consider the impact of any proposed sale of route authority on airline workers.⁶

In this case, we find that the transfer meets our standards for approval. Specifically, we note that Comair will maintain the routing and frequency levels currently operated by Delta and will maintain U.S.-flag competition with foreign carriers in the market. Furthermore, as an affiliated Delta Connection carrier, passengers will continue to benefit not only from the level of connecting services throughout the United States from New York currently offered by Delta, but also from Delta's passenger service programs. In these circumstances, we conclude that approval of the transfer will benefit the public and will not conflict with our international aviation policy objectives.

We also find that approval of the transfer is consistent with the additional criteria for consideration.

After analyzing the effect of the transfer on each carrier's viability, we conclude that substituting Comair for Delta on Route 617 will have a beneficial impact on each carrier. Comair will benefit from the addition of a new Canadian route, which it anticipates will be profitable. Delta will benefit from the ability to redeploy its aircraft more efficiently.

There should be no adverse effect on domestic competition as a result of this transaction. Indeed, the addition of another route for Comair should strengthen the carrier, particularly given the anticipated success of its service, thereby promoting its overall competitive posture. The effect on Delta will be minimal. Delta is a large carrier with many domestic and international routes. The effect of the transfer on Delta's domestic competitive posture should be limited especially in light of the fact that Comair will use the Delta Connection code on the route. Delta believes that the transaction will in fact strengthen its economic position.

We also find that there will be no adverse impact on the U.S. trade balance with Canada as a result of this transaction. Service in the New York-Montreal market will be maintained at the same service levels operated by Delta. Furthermore, since Comair is a Delta Connection carrier, passengers will continue to receive the same level of connecting services beyond LaGuardia on Delta's system as currently provided by Delta. In these circumstances, commerce between the United States and Canada will be preserved and there should be no adverse impact on the U.S. trade position in the U.S.-Canada market.

Finally, we find that the route transfer will have no adverse impact on airline workers. In fact, Comair states that it anticipates the transfer will create additional employment

⁶ See, *Initiative to Promote a Strong Competitive Aviation Industry*, January 1994.

opportunities at Comair; Delta has stated that the transfer will have no impact on any full- time personnel positions. Moreover, we note that no labor parties have opposed the transfer.

Based on the above, we will transfer Route 617 from Delta Air Lines, Inc. to Comair, Inc. As is customary, we will issue Comair's certificate in the form of a temporary, experimental certificate. By its terms, Delta's certificate is to expire October 17, 1996, but Delta timely filed an application for renewal (in Docket OST-96-1275) and invoked the automatic extension provisions of the Administrative Procedure Act, 5 U.S.C. §558(c) so that its authority would continue in effect pending final DOT action on its application. We will make Comair's authority effective five years from the date of issuance of the certificate and will dismiss as moot Delta's renewal application in Docket OST-96-1275. To ensure a smooth transition of service, we will grant Delta interim exemption authority to continue its New York-Montreal service through October 1, 1996, Comair's proposed startup date on the route.

ACCORDINGLY,

1. We grant the application of Comair and Delta to the extent consistent with this order;
2. We will cancel the certificate authority of Delta Air Lines, Inc. for Route 617 and reissue the certificate authority to Comair, Inc. in the form attached transferring Delta's authority to transport persons, property, and mail between New York, New York/Newark, New Jersey and Montreal/Ottawa, Canada, to Comair;
3. Unless disapproved by the President of the United States under 49 U.S.C. section 41307, this order and the attached certificate shall become effective on the 61st day following its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁷
4. We grant Delta Air Lines, Inc., interim exemption authority to continue its New York-Montreal service through October 1, 1996;
5. We dismiss the renewal application of Delta Air Lines, Inc. in Docket OST-96-1275; and
6. We will serve this order on Comair, Inc., Delta Air Lines, Inc., the Port Authority of New York and New Jersey; the Ambassador of Canada in Washington, D.C., the

⁷ This order was submitted for section 41307 review on September 5, 1996.

On September 11, 1996, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Aviation

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>.*



**Experimental Certificate
of Public Convenience and Necessity**

**For Route
617**

This Certifies That

Comair, Inc.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 96-9-14
On September 5, 1996
Effective on September 11, 1996**

**CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs**

Terms, Conditions and Limitations

Comair, Inc. for **Route 617**

is authorized to engage in foreign air transportation of persons, property and mail:

Between the terminal points New York City, New York/Newark, New Jersey
and Ottawa/Montreal, Canada.

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. § 40102(a)(15).
- (6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (7) Should the holder propose any substantial change in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n), it must first comply with the requirements of 14 CFR 204.5.

(8) In the event that the holder commences operations for which it was found “fit, willing and able” and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department.

(9) The holder acknowledges that this certificate is granted to determine if the holder’s projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

This certificate shall become effective **on September 11, 1996**. It shall expire five years after its effective date unless the Department earlier suspends, modifies, or deletes the authority.

*This certificate is issued to reflect authority transferred from Delta Air Lines, Inc. to Comair, Inc. It also incorporates new standard terms and conditions applicable to U.S. carrier certificates.